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New York, NY

STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE

VINCCI USA, LLC d/b/a THE AVALON

and Case Nos. 2-CA-36910
2-CA-37349

LOCAL 758, HOTEL & ALLIED SERVICES
UNION, SEIU

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for the General Counsel,
Brian C. Dunning and Jonathan A. Wexler, Esqs. (Vedder, Price, Kaufman & Kammholz, P.C.), New York, NY
for the Respondent
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for the Charging Party

DECISION

Statement of the Case

MINDY E. LANDOW, Administrative Law Judge. Based upon a charge, first amended charge and second amended charge filed on March 31, May 27 and July 29, 2005[1] respectively, in Case No. 2-CA-36910, and a charge and first amended charge filed on November 18 and December 13, respectively, in Case No. 2-CA-37349, by Local 758, Hotel & Allied Services Union, SEIU, herein the Union, a complaint issued against Hotel Stanford LLC, d/b/a The Avalon (herein Stanford) and its successor Vincci USA, LLC d/b/a, The Avalon (herein Vincci or Respondent) alleging violations of Section 8(a)(1)(3) and (5) of the Act. On February 22, 2006, the Regional Director, Region 2 issued an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing (the complaint) as well as an Order Approving Withdrawal of Certain Allegations of the Charge and Dismissing Corresponding Complaint (the Order).[2]

The complaint, as amended at hearing,[3] alleges essentially that Respondent violated Section 8(a)(1) and (5) of the Act by failing to recognize and bargain in good faith with the Union, by failing and refusing to furnish the Union with information requested which is necessary and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of certain of Respondent's employees and by making certain unilateral changes: (1) decreasing employees' personal days off from three to two per year; (2) increasing the work load and changing duties of employees in the Housekeeping Department and (3) eliminating the

[1] All dates hereafter are in 2005 unless otherwise specified.

[2] This Order removed Stanford as a respondent in this case.

[3] At hearing, Counsel for the General Counsel moved to amend the complaint to withdraw allegations pertaining to an alleged changes in employee sick leave benefits and compensation in holiday pay.

accrued seniority of employees which had been used for determining priority for time off and scheduling of employee work shifts. Respondent filed an answer on March 8 and an amended answer on March 22, 2006 denying the material allegations of the complaint. On March 29, 30 and 31, 2006, a hearing was held before me in New York, New York.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by Counsel for the General Counsel and Respondent, I make the following

Findings of Fact

I. Jurisdiction

Respondent has since July 1, 2005 operated a hotel facility located at 16 East 32nd Street, New York, New York (the Hotel). Respondent admits that, based upon a projection of its business operations since about July 1, 2005, Respondent will annually derive gross revenues in excess of $500,000 and annually purchase and receive goods and materials in excess of $5,000 directly from suppliers located outside the State of New York. Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. Labor Organization Status

As discussed in further detail below, the record establishes, and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.[4]

III. Alleged Unfair Labor Practices

Background

In May 2004, the Union was certified as the exclusive bargaining representatives of two units at the facility involved herein (the Hotel). One unit, involving employees of Hotel Stanford LLC d/b/a The Avalon (Stanford) consisted generally of full and part-time maintenance and front desk employees. The second, which involved employees of K&H Management Corp. (K&H), consisted of full and part-time housekeeping employees. In late 2004, K&H ceased all business operations and in about January 2005, Stanford hired all the housekeeping employees formerly employed by K&H. Thereafter, on June 3, 2005, The Regional Director of Region 2 issued a Decision and Clarification of Bargaining Unit which merged the two units into the following unit:

> All full-time and regular part-time service and maintenance employees including front desk employees, guest service managers, night auditors, bell staff, maintenance workers, housekeeping workers, housemen, laundry workers, minibar attendants and room attendants employed by the Employer at its facility located at 16 East 32nd Street, New York, New York, excluding all other employees, including office clerical employees, managerial employees and guards, professional employees and supervisors as defined by the Act.

[4] Respondent's answer avers that this allegation of the complaint calls for a legal conclusion to which no response is required.

It appears that no collective bargaining agreement was ever reached between the Union and Stanford.

Initial Union Contacts with the Prospective Owner

Fernando Montalvo has been the Managing Director of Respondent since it assumed operation of the Hotel. He is the highest-ranking on-site manager responsible for supervising employees through their respective department managers. Montalvo testified that he first arrived at the facility on June 6, and that he recalled Union organizer Neil Diaz presenting himself at the Hotel a few days before Vincci assumed operations. He additionally testified, however, that he first learned that a labor organization represented employees at the Hotel sometime later, during the fall of 2005, when attorney Brian Dunning so advised him.[5] The testimony of Diaz is at odds with this account.

According to Diaz, during the summer of 2004, rumors began to circulate that the hotel was going to be sold. Subsequently, sometime during the third week of January 2005, he received a telephone call from an employee advising him that a representative from the potential new owner was at the hotel. Diaz went to the hotel, bringing information regarding the Union and outstanding unfair labor practice charges which had been filed with the Board. Diaz saw someone emerge from the lobby conference room, who he surmised was related to the new owner, and approached him explained that he was from the Union. This individual introduced himself as Carlos Rentero,[6] who, as the record establishes, is Respondent's Revenue Manager. Rentero, who is primarily situated in Spain, shares authority concerning the operation of the Hotel with Montalvo.[7]

Rentero invited Diaz into the conference room and, because he stated that his ability to converse in English was limited, the two spoke in Spanish. Diaz told Rentero that the Union had organized the employees at the Hotel and that the Union had filed unfair labor practice charges against the employer. A few minutes later, Hwang, one of the owners of the Hotel under Stanford, walked into the room and the discussion ended. Diaz had no further contacts with any representative of the prospective owners for some months after this initial meeting.

In late-June, Diaz learned that management had scheduled a meeting for its employees. On June 28, Diaz went to the Hotel and introduced himself to Montalvo, asking him if he was the new owner. Montalvo replied that he was not. Diaz asked who the new owner was, and Montalvo told him to call his attorney. Diaz asked Montalvo some additional questions, but Montalvo replied only that Diaz should call his attorney. At that time, Diaz advised Montalvo that the Union represented employees in the facility and they had been trying to get a collective bargaining agreement with the employer. He also stated that he expected the new owners to sit down and negotiate with the Union when they took over the Hotel.

On the following day, June 29, Diaz had another conversation with Montalvo in the lobby of the hotel. He handed him a packet of information regarding the unfair labor practice charges that had been pending before the Board, as well as other documents including a fire safety letter, and recommended that Montalvo speak with his attorney about the documents. He then

[5] Dunning's initial communication with the Union as counsel for Respondent occurred in late-October.

[6] Mr. Rentero's name is frequently transcribed as "Ventero" or "Venterro" and, at times, witnesses referred to him as "Renterria." Montalvo testified that there is no individual by the name of "Renterria" working for the Respondent.

[7] Rentero did not testify herein.

proceeded to Stanford General Manager Marcio Azevedo's office.[8]

Vincci Assumes Operations of the Hotel

As of July 1, Respondent assumed operations at the Avalon, and hired virtually all the employees who had worked for Stanford, including those in the unit set forth above. Respondent admits that in assuming operations of the Hotel, it became a successor to Stanford. The former Stanford General Manager, Azevedo, remained on staff for approximately two several months to assist Montalvo with the transition. Henry Castillo is the Hotel's accountant. Carlos Calero is the C.E.O. of Vincci Hotels and his brother Rafino Calero is the President.

On June 29,[9] all employees were summoned to a meeting where the change in Hotel ownership was announced. Hwang spoke first, thanking employees for their service and introducing the new proprietors. Those present at the time included Carlos Calero, Rentero, Montalvo and Castillo. Also attending were Bozena Mroziewska, who was then the Housekeeping Department Manager, as well as Danuta Keilszewska, who subsequently assumed that position.

The Vincci principals who spoke at this meeting did so in Spanish, with Montalvo translating their comments into English. Calero introduced himself as President of the Hotel, and presented the others. He told employees that the Avalon was their first hotel in the United States, and said that employees and management would learn from each other. After his initial comments, Rentero conducted the meeting from that point onward, telling employees about the company and showing computer-projected slide photographs of other Vincci properties located abroad. According to witnesses who testified for the General Counsel, Ruth Ibarra, Trifinia Joaquin and Ania Cabrera, employees were told, in essence, that things would remain the same as they had been under the prior owner. It was also announced that all employees would have the opportunity to interview and they were all invited to fill out an application for employment.

Montalvo testified that, at this meeting, employees were advised of the opportunity to interview and complete an application, and that employees were told that the company had the intention of hiring as many people as they could. He also testified, however, that employees were told that "everyone will be starting from scratch since July 1st " Montalvo did not identify which Vincci representative made that statement, but confirmed that both Calero and Rentero spoke at the meeting. Montalvo testified that it was his understanding that this phrase meant that "all the seniority will start from July 1st, that everyone was going to be hired July 1st and everyone was going to be actually with the new company on July 1st. That whatever happened before we understood wasn't relevant for the new company." Montalvo did not testify, however, that this "understanding" was communicated to employees in so many words: rather, he repeatedly used the phrase "starting from scratch" to describe what was imparted to employees.

Montalvo was asked whether employees asked questions at the meeting. He recalled that one employee, who he could not identify, asked about seniority. The response to this question was that everything was "starting from scratch from the beginning, like a new company

[8] Although Azevedo's name is transcribed in the record as "Acevedo," Respondent's records indicate that the correct spelling is Azevedo.

[9] Witnesses were not completely certain about the date of this meeting, but the record demonstrates that only one was held. Employees Ruth Ibarra and Trifinia Joaquin testified that they completed employment applications on the same day as the meeting, and their applications are dated June 29. Carmen Garcia testified that the meeting was held on June 30.

and new opportunities for everyone."

Carmen Garcia, who has worked at the Hotel since September 1998, is currently employed by Respondent as Front Desk Manager. At the time of the June 29 meeting, she was a Front Desk Agent.[10] Garcia testified that she attended the meeting, and that after Rentero introduced the company and showed pictures of other properties, employees started to ask questions. Employees were told that they would be receiving an application to complete and meeting with a representative of Vincci for an interview. According to Garcia, someone sitting behind her, who she could not identify, asked about seniority, and Rentero said that everyone would be starting from July 1. Garcia said that upon hearing this, her heart started beating a little, but she was comfortable with it since it was time for a new company and for things to change.

Garcia testified that after the meeting she had a discussion with fellow Front Desk employees Nancy Namieze and Ania Cabrera. They were online, looking at various Vincci properties. The three were nervous about the upcoming interview and they spoke about losing their seniority. Garcia testified that Cabrera said to her, "You see, you lost all your seniority." Garcia testified that she just looked at Cabrera and smiled, because seniority was not a big issue for her.[11] Cabrera, who is no longer employed by Respondent, was called by Counsel for the General Counsel for rebuttal testimony, and denied that she had ever had such a conversation with Garcia.[12] In addition, Ibarra and Joaquin testified, on rebuttal, that there had been no discussion of seniority or scheduling at the meeting, and that the employees did not speak or ask questions at the time.[13]

Housekeeping employee Fabiola Coronel also testified on behalf of Respondent. Coronel recalled that Hwang made some initial comments, that a slide presentation was shown to employees and that Montalvo and Rentero were present. When asked if she remembered anything that was said, Coronel replied "[t]hey said that all of us were going to start as new. There were going to be small changes. And that all of us were going to start the same day, the July 1st, and we all were the same." Coronel could not recall who made the above statement, or whether employees asked questions.[14] When specifically asked by counsel for Respondent whether any of the Vincci representatives talked about seniority rights, Coronel replied "I think at that meeting nothing like that was mentioned."[15] Coronel further testified that she later attended meetings of the housekeeping staff, where Montalvo was present, and the issue of seniority came up on several occasions. Montalvo told the staff that there was no seniority for anyone, because they had all started as new employees.

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[10] Garcia was promoted in September 2005.

[11] Garcia later testified that she responded to this comment with the reply, "so what."

[12] On sur-rebuttal Garcia testified that this conversation did, in fact, occur and was related on ongoing dispute between the two due to the settlement of an unfair labor practice charge regarding Cabrera's seniority. In fact, the settlement in question, which pertained to a number of issues not relevant here, remedied among other things, the prior employer's unlawful changes in work schedules of employees, but did not specifically address the issue of seniority.

[13] Cabrera's testimony indicates that there may have been some excited chatter among employees, particularly when slides of the Vincci properties located abroad were shown, including rhetorical questions about whether employees would be able to go and work at these facilities.

[14] Coronel was also unable to recall when this meeting took place.

[15] On cross-examination Coronel testified that on Tuesday, two days prior to her testimony, she was called to a meeting with Montalvo and Castillo to discuss her testimony. She later testified that she was told to tell the truth during her testimony.

After the meeting, employees met with Vincci representatives and were provided with employment applications to complete. Ibarra, a housekeeping employee, was interviewed by Montalvo and someone from Respondent's human resources department. Montalvo introduced himself and asked Ibarra what, in her opinion, should be changed in the Hotel. Ibarra replied that there were many things which should be changed, and specifically mentioned that the floor rugs should be replaced and that employees needed uniforms. During this discussion, Ibarra asked Montalvo whether her seniority would change, and Montalvo replied "possibly," because he did not know who she was or how she worked. Ibarra was given an application, which she completed and returned the following day. Ibarra's testimony on these issues is unrebutted.

Joaquin, who is also a housekeeping employee, was interviewed by Rentero, who asked her how long she had worked at the Hotel, and what her job was. He too, asked what changes should be made to improve the Hotel, and Joaquin testified that the facility needed additional sheets and towels. Rentero said that her salary would improve and told Joaquin that from that point on she was an employee of Vincci. She was given an employment application to complete, which she later did, and returned to Montalvo.

Cabrera, a former Front Desk agent, was interviewed by Rentero the day following the meeting. She testified that she was told that her schedule would remain the same and there would be no changes. There was no discussion of seniority during this interview. Cabrera additionally testified that, in addition to the meeting attended by all employees, a subsequent meeting for front desk employees was conducted by Montalvo and Azevedo. Employees were told that they would keep the same schedule and there would be no changes.

Room Attendant Dominga Martinez was never interviewed by a representative of the new Hotel ownership. Azevedo provided her with an application packet, which she completed and signed on July 4 and returned to her supervisor.

The application packet distributed to employees contains several sections. It includes an organizational chart of the Vincci organization, a list of "quality standards" that employees are expected to adhere to[16] as well as the application form itself which asks for personal data and information regarding the employee's education and employment history. In addition, there is an attachment describing certain employment policies. The enumerated policies pertain to sick leave, dress code, discipline, attendance, and harassment. The application packets in evidence show that employees signed each page thereof. There is no reference in the application form or any attached document to seniority, scheduling or to personal days or other paid time off.

All but a few of the predecessor's employees were hired by Vincci. There was no hiatus in Hotel operations.

The Union's Demands for Information and Bargaining

On July 19, Diaz wrote to Elias Eliopoulos and Michael P. Mangan, attorneys that, as he understood, were representing the Respondent. In this letter, Diaz described the certified bargaining unit, requested to meet for the commencement of negotiations to reach a collective

[16] These include admonitions that an employee will come to work "in good shape," shaved and clean and with a clean and tidy uniform. Mustaches, beards, strong perfumes and big jewelry are prohibited. In addition employees are told that they must use the employee entrance, designated bathrooms and refrain from using the guest elevator except when necessary because of job duties.

bargaining agreement and requested certain information which, Diaz explained in the letter, was necessary for the Union to represent employees effectively in negotiations. The information sought was as follows:

The complete names and addresses of all persons or entities that hold an ownership interest in the hotel.

Name, address, telephone number, job classification, date of hire, date of completion of any probationary period, and all records of discipline, for all bargaining unit employees.

Payroll records and IRS Form W-2 for all bargaining unit employees for the period from July 1, 2004 to the present.

As to each bargaining unit employee, records that show the date and amount of each wage increase received by the employee on or after January 1, 2004 and the resulting wage rates.

Records that show the number of regular and overtime hours worked by each bargaining unit employee during each week of the period from July 1, 2004 to the present.

For each bargaining unit employee, records that show the number of paid sick days received by the employee for 2004, and the number of such days to which the employee is entitled in 2005.

For each bargaining unit employee, records that show the number of paid vacation days received by the employee for 2004, and the number of such days to which the employee is entitled in 2005.

For each bargaining unit employee, records that show the number of paid holidays received by the employee for 2004, and the number of such days to which the employee is entitled in 2005.

Records that show (a) the types of medical coverage available to bargaining unit employees, such as individual coverage, family coverage, parent/child coverage, etc., (b) the number of bargaining unit employees enrolled in each type of coverage, (c) the monthly or weekly cost to an employee for each type of coverage, and (d) the monthly amount charged by the Employer for COBRA continuation coverage for each type of coverage.

Copies of the plan documents, summary plan descriptions and insurance contracts and endorsements for all employee benefit plans that cover or covered a bargaining unit employee at any time during the period from January 1, 2004 to the present.

Copies of all documents that describe or explain policies or practices concerning wages, hours, benefits, work rules, and/or other terms or conditions of employment of bargaining unit employees that have been in effect at any time since January 2004, including but not limited to handbooks, manuals, policy statements, memoranda and correspondence.

Copies of all current job descriptions.

A copy of this letter was sent to Montalvo, who under questioning by the General Counsel, admitted that he received the letter.[17] Although Mangan left Diaz a voice mail message a few days later, Diaz was subsequently unable to reach him, and he failed to return Diaz's phone calls.

On July 25, the Union erected an inflatable rat and began holding ongoing rallies in front of the Hotel each weekday from noon to 6:00 p.m. On the first day this occurred, Azevedo approached Diaz and asked why the Union was doing this, instead of speaking with the attorneys. Diaz replied that he had not received any response to his letter. During their discussion, Azevedo informed Diaz that Eliopoulos and Mangan were not representing the Hotel, and that the attorney doing so was David Rothfeld. Diaz replied that the Union would not take down the rat, and that he was expecting the General Manger of the Hotel to call the Union to start negotiations. During the course of the day, Diaz saw Montalvo coming out of the building. Diaz approached Montalvo and asked when he was going to start negotiations, but was ignored.

On July 29, Diaz made a second request for bargaining and information, identical to the first, but this time it was sent to Rothfeld. He received a response, dated August 12, the body of which states:

> Together with our client we have been working on compiling information responsive to your requests for information, subject to any rights or defenses we may have. With specific respect to your request to bargain, and as same is relevant to the context of your information request, please provide me with a copy of Local 758's Certificate as Collective Bargaining Representative for the Vincci Avalon.

Diaz referred the letter to Union attorney Kent Hirozawa, who responded on August 18, enclosing the relevant certifications and the Decision and Clarification of Bargaining Unit creating the single wall-to-wall service and maintenance unit.

Prior to receiving Rothfeld's response, on August 4, Diaz visited the hotel, proceeding to Montalvo's office, located in the basement. He asked Montalvo, in the presence of Castillo and three other employees, when the Hotel was going to start negotiations. Montalvo again told him to contact his attorney. Diaz stated that he had received no response from his attorneys, and suggested that Montalvo contact Local President John Hickey. Castillo told Montalvo to leave the premises. Diaz asked for the name of someone the Union could contact at the Hotel, and Montalvo repeated that Diaz should call his attorney, and Castillo again told him to leave. Diaz proceeded to the cafeteria, where employees were having lunch, to speak with them. As he came out of the cafeteria, Diaz was confronted by Montalvo and Castillo who said he could not come into the premises without announcing himself and threatened to call the police if he did not leave. Diaz stated that he would be coming in every day if the Hotel did not start negotiations. The three men proceeded to the lobby, and Montalvo called the police, at which point Diaz left the facility. The following day, Diaz returned to the facility. In the lobby he was confronted by Montalvo who insisted he leave the premises, which he did. During this general period of time, Diaz made additional attempts to contact Hotel representatives. He also sent pictures of the inflatable rat and employee rally, together with copies of leaflets and unfair labor practice charges, to Vincci hotel properties abroad. On August 17, Diaz saw Montalvo walking

[17] Montalvo testified that he complied some of the information sought and forwarded it to his attorney, David Rothfeld. Respondent does not contend, however, that the information was forwarded to the Union at this time.

by the rally in front of the Hotel and asked Montalvo when he would call the Union and when they would start negotiating. Montalvo ignored him.

On October 26, Union attorney Kent Hirozawa received a telephone call from Brian Dunning, who introduced himself and said that he had recently been retained as counsel for Vincci. Dunning said that they were still in the process of figuring out what was going on with the Hotel, and proposed a meeting. Hirozawa replied that the Union had been demanding bargaining for some time, and Dunning replied that it was premature to talk about negotiations, but that a meeting would be useful. A meeting was scheduled for November 1. Later that day, Dunning called Hirozawa and said that it had been premature to set up a meeting. Hirozawa asked when he would be in a position to do so, and Dunning replied that he needed to have some more discussion with his client and would let Hirozawa know when that time came.

On November 18, Vincci C.E.O. Carlos Calero visited the Hotel. The Union had been staging a rally, and there was a crowd present, carrying signs which bore slogans such as "sign the contract." Calero continued into the hotel, and subsequently the police arrived, but did not disturb the rally. During that ensuing week, Diaz left messages at the hotel desk, seeking a meeting with Calero. On November 23, Montalvo came outside and told Diaz that Calero wanted to meet with him. The three men proceeded to a second floor banquet room. Calero told Diaz that he was in New York to fix the problems with the Hotel, talk to the Union and see what could be done. He stated that the company's hotels in Spain were unionized, and he had no problem with the Union. He asked Diaz to take the rat down. Diaz replied that if the parties started negotiations, and things looked good, he would speak to the Union president about doing so. Calero stated he would contact his attorney about setting up negotiations. Diaz stated that he would take the rat down for the rest of the week, until the parties sat down with each other, and what would happen in the future depended on what happened during negotiations.[18]

On November 23, Dunning contacted Hirozawa about setting up a meeting similar in concept to what had been initially planned for November 1. A meeting was set for the following Monday, November 28, and took place as scheduled. Dunning and his partner, Jonathan Wexler, met with Hirozawa and Diaz in Dunning's office. Dunning asked questions about the Union and the parties generally discussed the hotel industry in New York City. Dunning requested that the Union suspend picketing at the Hotel while the parties were making arrangements to meet and meeting. Hirozawa replied that he did not think the Union would do that as the Hotel had reneged on its obligation to meet and bargain since July. Hirozawa further stated that if the Union believed that the parties were under way to an acceptable contract, it would cease picketing. Hirozawa also stated that it would be helpful if the Hotel would rescind the change that had been made regarding the denial of accrued seniority to employees[19] and reinstate those employees that had been terminated when Vincci took over.

The parties generally discussed their schedules in the upcoming few weeks, and there was talk of possibly scheduling a meeting when Carlos Calero, who had returned to Spain, would be in town. Dunning stated that he would contact Hirozawa once he determined his client's schedule. He also requested copies of the multi-employer agreement that the Union has with certain hotels New York City as well as the Stanford agreement. Although Hirozawa believed that Respondent already had copies of such agreements, he agreed to send them to Respondent, which he did later that day.

[18] In addition to demanding negotiations, Diaz also requested that Respondent reinstate employees' seniority and rehire certain employees who had been discharged when Respondent assumed operations.

[19] This change, alleged as an unfair labor practice herein, is discussed in further detail below.

Subsequently, on December 2, Dunning wrote to Hirozawa, expressing disappointment that the Union had not agreed to cease picketing, and complaining about disruptive activity he claimed the Union had engaged in at the Hotel. Hirozawa responded by letter dated December 6 in which he denied any disruptive activity and reiterated the Union's position that it would consider the cessation of picketing when the Union was satisfied that Respondent was committing to reaching a contract with the Union on acceptable terms. Dunning and Hirozawa also had a series of voice and e-mail communications regarding potential meeting dates, and a negotiation session was scheduled for December 19.

The parties met on December 19 in Dunning's office. Montalvo and Castillo were accompanied by attorneys Dunning and Wexler, with Diaz and Hirozawa present for the Union. The parties discussed the structure of the bargaining. Hirozawa stated that if it was acceptable to the Hotel, the parties could work off the Master Agreement, with particular accommodations for the Hotel, as had been done with the Stanford agreement. In the alternative, the parties could bargain a new agreement from scratch, and the Union would be happy to provide a proposal if that was the approach the Hotel preferred. Most of the meeting was spent answering the Hotel's questions about the two collective bargaining agreements, and how particular terms were applied. There was also some discussion of job classifications, wages, seniority and arbitration. Dunning stated that the company would review the information and put together a proposal. Another meeting was scheduled for January 3, at which time this proposal was to be discussed.

Respondent later cancelled that meeting.[20] Hirozawa and Dunning spoke on January 3, and Dunning said that he had not been able to get a proposal together, but that he would have a good idea of when it would be completed by the end of the week. Dunning stated that he would call and advise Hirozawa when the proposal would be ready, and then the parties would be in a position to schedule a meeting. Dunning also stated that Respondent would send the Union the proposal in advance of the meeting. Hirozawa did not hear anything for the balance of that week. On Monday, January 9 he telephoned Dunning who was not available. He left a voice mail message, but did not get a response for several weeks. On February 6 the parties finally spoke. Dunning told Hirozawa that it had been more difficult than anticipated, and he did not have a proposal yet. He stated that he would be traveling to Spain, that people from Spain would be traveling here and he would have to check on dates and availability.

Later in the week, Dunning contacted Hirozawa and informed him that his client was coming over from Spain the following week, and proposed a meeting on February 17. The parties agreed to meet on that day at 2:00 p.m. at Dunning's office.[21] Present on this occasion were Dunning, Wexler, Montalvo, Castillo, Rentero, Diaz and Hirozawa. Dunning stated that there had been no time to reduce anything to writing, but presented oral proposals relating to wages, pension, seniority, holidays, vacation, room quotas and sick leave. The parties

[20] On December 29, Hirozawa sent Dunning an e-mail to confirm the January 3rd meeting. In ensuing correspondence, Dunning replied that finalizing a proposal by January 2nd would be difficult given that business was not conducted in Spain during that week, and said he would call to discuss the matter. Hirozawa offered to meet later in the day, and Dunning replied that "Tuesday might be too ambitious, after all."

[21] The parties had earlier agreed to alternate meeting locations. Dunning asked that the second meeting take place, out of order, in his office due to his client's unfamiliarity with American labor negotiations and his possible discomfort with the situation. Hirozawa agreed as long as it was understood that the parties would alternate in the future.

caucused, and Hirozawa stated that to properly evaluate and respond to these proposals the Union required the information that had been requested back in July and which had not been provided. Wexler asked for copies of the original information request and copies of the Pension Fund and Benefit Fund trust agreements, which Hirozawa sent, via e-mail, later that day.

On March 10, Dunning sent Hirozawa an ADP master control list, for the pay period ending February 24, which contains a list of employees and their addresses. Counsel then exchanged a series of e-mails. On March 15, Hirozawa acknowledged receipt of the document, and inquired about when the rest of the information would be coming and when the employer would be prepared to present a comprehensive proposal. On March 16, Dunning replied that it was his understanding that the Union was supposed to be reviewing the economic terms of the last offer. On March 23, Hirozawa reiterated that the Union could not properly evaluate the proposals without the information that it had requested the previous July.[22] Hirozawa also requested that the Respondent provide the Union with a comprehensive proposal. To date, no further meetings have been scheduled. Hirozawa testified that the information that the Union requested in July 2005 is essential to enable the Union to respond to and formulate bargaining proposals.

The Alleged Unilateral Changes

The complaint alleges that Respondent implemented a number of unilateral changes without notice to or bargaining with the Union. These include (1) the elimination of accrued seniority which had been used for, among other things, determining priority for time off and scheduling; (2) an increased work load and changed duties for employees in Housekeeping Department and (3) a decrease in employee personal days from three to two.

The Alleged Elimination of Accrued Seniority

Ibarra testified that in mid-November a meeting of all the housekeeping employees was held in the cafeteria with Azevedo, Castillo, Montalvo, Mroziewska and Keilszewska.[23] Ibarra arrived late for the meeting, and when she arrived a discussion was underway about how there would be no more seniority, and that everyone would be considered to have started work as of July 1. Montalvo announced that personnel would start rotating days off. Ibarra had previously worked a regular schedule, Monday to Friday, having Saturday and Sunday off. After this announcement, her days off changed from week to week, and she did not know what days off she would receive until the schedule for the following week was posted. At times her days off are consecutive and at other times they are not. On occasion, she is scheduled to work for six to eight successive days prior to receiving a day off. Ibarra's testimony was corroborated in large measure by Joaquin. Prior to November 2005, Joaquin worked Monday to Friday. Since November, her days off have changed from week to week. Like Ibarra, Joaquin does not know what her schedule will be until it is posted. Housekeeping employee Martinez testified that, although she was not at the November 2005 meeting, she heard about the change from the coworkers. Previously she had Thursday and Friday of each week off and like the others, she now has varying days off from week to week.

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[22] Hirozawa's unrebutted testimony is that Respondent never inquired as to why this information was required, and that the information relating to first item (relating to the names of those individuals possessing an ownership interest in the Hotel) is necessary to determine who the appropriate parties to the contract would be to render it enforceable.

[23] According to Ibarra, Mroziewska was the supervisor of the department until sometime in November 2005, and Keilszewska acted as supervisor from November until January 2006.

With regard to this issue, Montalvo testified that he conducts monthly meetings with the housekeeping staff, and the seniority issue has come up on several occasions. On each occasion, it has been explained to employees that their seniority started on July 1. Montalvo also testified that in about mid-October, Coronel came to his office and asked why, if seniority for all employees began as of July 1, the scheduling wasn't done more fairly, and complained that certain days off were consistently assigned to certain people, and not rotated among employees. Montalvo replied that he didn't understand why the scheduling was being done in that fashion and, if the scheduling was not reflecting the seniority rules fairly, he would have a meeting with the employees and inform them that this was something that had been done wrong, and would be changed.

Montalvo testified that he subsequently attended a meeting of housekeeping employees where he "informed everyone that as we mentioned when we took over the property about seniority, that everyone was hired on July 1st and everyone was starting from scratch. So seniority for all of them should be the same, so the scheduling will be rotated so everyone will be having weekends off and everyone will be having fair schedules and fair time off."

Coronel testified that when the issue of seniority came up at monthly housekeeping department meetings, Montalvo stated that there was no seniority for anybody because they had all started as new employees. Coronel testified that she had a discussion about shifts and assignments with Montalvo, but that this came about because the schedules, as she put it "weren't steady." According to Coronel, "I asked him if they were going to change at any moment and if we're going to have steady days. And he said that the Hotel – the schedules had to vary and you could not have a steady day off."

The Alleged Unilateral Increase in Work Duties in the Housekeeping Department

Respondent's room attendants generally work during the hours from 8:00 a.m. to 4:00 p.m. They are each responsible for cleaning a minimum of ten rooms per day. Extra rooms may be assigned, as needed, for additional compensation. The room attendants' typical responsibilities include changing sheets on the beds, vacuuming floors and dusting furniture and table lamps. In addition to these customary duties, supplementary tasks known as "projects" would be listed in the far-right column of employees' daily assignment sheets, known as "maid's reports." Joaquin testified that, "they always listed one or two daily projects besides the 10 rooms." No other employee witness offered specific testimony regarding the frequency of these assignments. Thus, it would appear from the record that projects were dispensed on a daily basis.

Beginning in about October 2005, room attendants were no longer assigned projects but were told that they were expected to clean everything in their assigned rooms as well remove room service trays and clean the tables, paintings, mirrors and rugs in the common areas on the floors to which they were assigned.[24] General Counsel concedes that these tasks were among those previously assigned on the maid's reports. According to Joaquin, she had done all these jobs previously, but not as frequently as she does them now. In addition, it appears that certain tasks, including the removal of room service trays and cleaning the trash cans located at the

[24] As Martinez testified: "Now we have to do the 10 rooms plus cleaning the edges of the rooms, the pictures, the mirrors, candelabra, the armoire at the top and on the inside, remove the tray from the restaurant, clean the edges of the hallway outside, vacuum the times that are needed, clean the candle holders on the hallway, the pictures and the mirrors."

elevator, may have previously been performed by other employees in the Housekeeping Department. In this regard, it appears from the testimony of the witnesses that certain employees are, at times, responsible for general cleaning duties rather than specific room assignments. For example, Martinez testified that for some period of time after she began working at the Hotel, she did not have an assigned floor but was responsible for general cleaning duties. The role of such employees in the overall functioning of the Housekeeping Department, both before and subsequent to the alleged unilateral changes, is not clear, however. Witnesses also made reference to classification of employee known as "houseman," who shares the responsibility for cleaning duties. There is a lack of specific evidence regarding how the duties of the houseman generally differed from those of room attendants under either Stanford or Respondent.

According to Ibarra, prior to the change in work duties she used to finish her daily tasks at about 3:00 or 3:15 p.m. and was able to use the balance of her time to stock up on supplies. After the change was announced, the time it took for her to complete her work was extended, and for some time she had to stock her supplies in the morning. Ibarra did not specify how much longer her new job tasks took her, however. In addition, it appears that this situation is now somewhat different, as Ibarra testified that for the past three or four weeks her supplies have been delivered to her by a houseman. Similarly, Martinez testified that the new work assignments change the time it takes her to do her job. Previously she finished work at 2:30 to 3:45, which gave her time to organize and leave everything clean. Now, she finishes her assigned tasks later in the day. Again, Martinez did not provide specific testimony about how much longer she has to work to complete her assignments.

On cross-examination the housekeeping employees who testified all acknowledged that their regular work hours have not changed, and their work has never required them to stay beyond 4:00 p.m. Martinez did testify that from time to time, employees "back up and we help ourselves between us so we can get finished earlier." However, no testimony was adduced as to whether this has historically been the case, or is a result of any alleged change in work assignments.

Respondent does not dispute that the housekeeping employees have assignments as described, but asserts that this has been the case since it assumed operations. According to Montalvo, each hallway contains two paintings, two small tables and two mirrors. Room Attendants were provided with a special extended-length duster to facilitate the cleaning of hanging lamps and the tops of armoires and are not required to move and clean behind furniture. This is done on a monthly basis by other employees.

The Alleged Change in the Number of Personal Days

Under prior ownership, employees were entitled to three paid personal days per year. According to Ibarra, in September 2005, Housekeeping Department Manager Mroziewska informed her and other employees that employees were now entitled to only two personal days per year, instead of three days as had been previously been allowed.[25] Joaquin testified that she has heard from her coworkers that the number of days has been reduced to two. Martinez testified that in October she needed to take a personal day. She spoke about the matter with, Mroziewska, who told her that employees were no longer entitled to three personal days. Mroziewska then called Castillo to verify how many days Martinez had left, and she was allowed

[25] Mroziewska is usually referred to in the record as "Bosena." It appears from the record that her first name is spelled "Bozena." Mroziewska did not testify.

to take the day.

Montalvo testified that under the previous ownership, employees were entitled to three personal days: one for their birthday, one for the anniversary of their date of hire and one other day to be taken at their discretion. He also stated, however, that he did not learn about this policy until after Respondent assumed operations.[26] According to Montalvo, no Hotel employee has been denied the right to take a third personal day. Montalvo did not testify, however, as to what Respondent's current policy is or whether it is in conformity with the prior practice. There is also no evidence that Respondent has rescinded its announcement of the change, as described by employees.

Analysis and Conclusions

Respondent's Duty to Bargain with the Union

The Board's traditional test for determining if a purchaser has a duty to continue the bargaining relationship established by its predecessor is whether there is a substantial continuity in the employing enterprise. A comparison of business operations, plant, work force, jobs, working conditions, supervisors, machinery, equipment, production methods and product or service is made to ascertain if continuity exists. *Fall River Dying Corp. v. NLRB*, 482 U.S. 27, 42-46 (1987). In the instant case, the evidence establishes, and Respondent has admitted, that it is a successor employer. Respondent continued providing the same service to its customers without any hiatus, at the same location and using the same supervisory and non-supervisory staff.

The record further establishes that on numerous occasions both before and after Respondent assumed operations of the Hotel, the Union made it well known to Respondent that it represented its employees. In this regard, Montalvo's testimony that he did not know that the Union represented the Hotel's employees until he was so advised by his attorney in the fall of 2005 cannot be worthy of credit. This fact clearly would have been ascertained in any pre-acquisition due diligence investigation. Moreover, not only was Montalvo party to several discussions to such effect with Diaz,[27] but he admittedly was in receipt of the Union's July 19th letter. Further, the record establishes that commencing in late-July, the Union erected an inflatable rat and began picketing at the Hotel due to Respondent's failure to meet and bargain over an agreement. I additionally note that Azevedo remained on staff to assist Montalvo with the transition. It is simply not credible that Azevedo would not have advised Montalvo about the Union's representation of employees at the Hotel, if he had not known of it previously. Under all these circumstances, I conclude that it would have been virtually impossible for Montalvo to remain unaware of the Union's status at the Hotel.[28]

The evidence is also clear that, after Respondent assumed operations of the Hotel, there was a viable demand for recognition and bargaining from the Union, on several occasions, and at the very latest, by July 29, when the Union's demand for bargaining and information was sent to its then counsel-of-record David Rothfeld.

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[26] I note that the charge alleging this unilateral change was filed in November 2005.

[27] I note that Diaz's testimony regarding the various discussions he had with Montalvo during which he requested bargaining was not rebutted.

[28] This is one of several instances in which Montero's credibility is seriously called into question. The outlandish nature of this assertion casts doubt on the veracity of his testimony generally.

Based upon the foregoing, the record establishes, and I find, that upon its assumption of operations at the Hotel, Respondent had a duty to bargain with the Union. *NLRB v. Burns Intern. Sec. Services, Inc.*, 406 U.S. 272 (1972).

Respondent's Refusal to Bargain in Good Faith

The complaint alleges that since its assumption of the Hotel, Respondent has refused to recognize and bargain in good faith with the Union by refusing to meet from July 1 thorough mid-December 2005, by failing to promptly schedule bargaining meetings and failing to offer counterproposals.

In *J.H. Rutter-Rex Mfg. Co*., 86 NLRB 470, 506 (1949), the Board stated that the obligation to bargain

> encompasses the affirmative duty to make expeditious and prompt arrangements, within reason, for meeting and conferring. Agreement is stifled at its source if opportunity is not accorded for discussion or so delayed as to invite or prolong unrest or suspicion. It is not unreasonable to expect of a party to collective bargaining that he display a degree of diligence and promptness in arranging for collective-bargaining sessions when they are requested, and in the elimination of obstacles thereto, comparable to that which he would display in his other business affairs of importance.

See also *Calex Corp*., 322 NLRB 977 (1997) ("considerations of personal convenience, including geographic or professional conflicts to not take precedence over the statutory demand that the bargaining process take place with expedition and regularity"); *Caribe Staple Co.*, 313 NLRB 977, 893 (1997); *Lancaster Nissan*, 344 NLRB No. 7, slip op at 3. (2005) (delay tactics resulting in only 12 meetings during the initial certification year held to violate Section 8(a)(5)).

The Board has held in numerous cases that a party who limits or delays meetings has not met its statutory obligation to meet and bargain, in violation of the Act. In *Calex Corp*., supra, the fact that the employer met only three times in a three month period, and cancelled other scheduled meetings, was found to comprise "purposeful delay." Similarly, in *Caribe Staple*, supra, the respondent was found to have violated the Act where the parties met and bargained on average once per month over the course of a 13-month period, despite union requests for more frequent meetings.

In the instant case, the evidence demonstrates that the Union made repeated requests for bargaining, both in person and in writing, to Respondent's managerial personnel and counsel. For a period of some four months there were no meetings whatsoever during which time Respondent's counsel cancelled a meeting scheduled for November 1, with no specified alternative date. In fact, no face to face meeting was held until November 23. This meeting was in no sense a discussion of terms and conditions of employment, but rather was arranged by Carlos Calero with the object of convincing Diaz to remove the inflatable rat stationed in front of the Hotel. Thereafter, on November 28, a meeting was held, albeit with the caveat that it was not to commence negotiations, but rather engage in a "pre-bargaining" discussion. A negotiation session, scheduled for December 19, was the first time the parties discussed, in any sort of substantive manner, terms and conditions of employment. I further note that a subsequent meeting was cancelled by Respondent. The parties did not meet again until almost two months later, on February 17, 2006. To date, no written proposals have been presented to the Union.

In its brief, Respondent argues that the parties have met on at least three occasions to bargain, and those meetings have included substantive and detailed discussions about wages,

benefits and work rules. Therefore, it is argues, the General Counsel's claim is moot.[29] Respondent's argument, of course, fails to address its abject failure to meet with the Union in any manner whatsoever for a period of four months, the delay of some five months before any bargaining proposals were discussed, and its additional failure to timely schedule meetings with the Union, once it undertook to do so.

Based upon the foregoing, I find that by refusing to meet from July 1 thorough mid-December 2005 and by failing to promptly schedule bargaining meetings, Respondent has violated Section 8(a)(5) of the Act, as alleged.[30]

The Refusal to Provide Information

The complaint alleges that on or about July 19, by letter, the Union requested that the Respondent furnish it with certain information, which is set forth in full above. The complaint further alleges that such information is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the employees and that Respondent, since July 19, has failed and refused to provide it.

The Respondent's answer admits that the Union requested the information, but denies that the information is necessary for, and relevant to, the Union's responsibilities as the collective-bargaining representative of the unit. Additionally, on the record and in its brief, Respondent acknowledges that it did not initially provide the documents sought to the Union, but asserts that the claim is now moot inasmuch as it did produce the vast majority of them in response to the General Counsel's subpoena duces tecum.

It is well established that an employer has an obligation to supply requested information which is reasonably necessary to the exclusive collective-bargaining representative's responsibilities. This duty to provide information includes information relevant to contract negotiations and administration. If the information is relevant or arguably relevant, meeting a liberal "discovery type standard," such information must be provided. *NLRB v. Acme Industrial Co*., 385 U.S. 432 (1967); *NLRB v. Truitt Mfg. Co*., 351 U.S. 149 (1956). Information which is presumptively relevant must be provided within a reasonable time or, if not provided, there must be a timely explanation of why the request cannot be met. *FMC Corp*., 290 NLRB 483, 489 (1988). An unreasonable delay in furnishing requested information is, in and of itself, a violation of Section 8(a)(5) of the Act. *Valley Inventory Service*, 295 NLRB 1163, 1166 (1989).

In general, the Union here requested data concerning the identity and status of unit employees, and information regarding wages, hours and other terms and conditions of employment of unit employees. Such information is presumptively relevant. *Maple View Manor*, 320 NLRB 1149, 1151 (1996). It is the employer's burden to prove any lack of relevance for information requested by a union which is presumptively relevant. *Contract Carriers Corp*., 339 NLRB 851, 858 (2003). In this case, Respondent offers no evidence or argument pertaining to why such presumptively relevant information should not be provided to the Union, or any explanation of why it has failed to do so.

With regard to the Union's request for information regarding the ownership interests of

[29] The General Counsel appears to concede that bargaining commenced in mid-December.

[30] The evidence fails to establish that Respondent has violated the Act specifically by failing to offer counterproposals, as alleged in the complaint.

Respondent, Counsel for the General Counsel concedes that such information has traditionally found not to be presumptively relevant. In support of its argument that such information should have been provided to the Union, General Counsel relies upon *Corson & Gruman Co*., 278 NLRB 329, 334 (1986), enfd. 811 F.2d 1504 (4th Cir. 1987). In that case, which arose in a context where the requesting union believed that the signatory to its collective bargaining agreement was involved in an alter ego or single employer relationship with another entity, the administrative law judge, affirmed by the Board, held that regarding non-presumptively relevant information, "the requesting union need not inform [an employer] of the factual basis for its requests, but need only indicate the reason for its request." Here, the Union initially told the Respondent that the information was needed in order to properly represent members in contract bargaining. During the hearing, Union counsel Hirozawa provided a more detailed rationale, explaining that the information was necessary in order for the Union to be certain that any contract it negotiated with Respondent included the appropriate parties to ensure enforceability. General Counsel argues that the Union's unease on this point was justified in light of Respondent's alleged "stonewalling," including Montalvo's repeated denials that he was the new owner together with his failure to providing the identities of appropriate contacts for the Union's bargaining requests.

When a union requests information which does not concern the terms and conditions within the bargaining unit, there is no presumption of relevancy. *Dexter Fastener Technologies, Inc*., 321 NLRB 612, 613 fn. 2 (1996). In such an instance, the probable or potential relevance of the information must be shown. Id; *Shoppers Food Warehouse Corp*, 315 NLRB 258, 259 (1994). However, the burden to show relevance is "not exceptionally heavy." *Leland Stanford Junior University*, 262 NLRB 136, 139 (1982). The question is "whether there is a probability that the desired information [is] relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities." *Acme Industrial*, 385 U.S. at 437. I find that, under the circumstances here, where the Hotel had been purchased by a foreign company unknown to the Union, doing business in this country for the first time, the Union clearly had a valid reason for requesting such information, especially in light of the fact that the parties were bargaining for an initial contract. I further find that the Union's need for such information would be apparent to the Respondent. "[W]here the relevance . . . is obvious in the context of negotiations, the [employer] cannot resist disclosure simply because the union has failed to make a formal appearance of its theory of relevance." *Soule Glass & Glazing Co*., *v. NLRB,* 652 F.2d 1055, 1099, (1st Cir. 1981), quoted in *Barnard Engineering Co*., 282 NLRB 617, 620 (1987). Moreover, the necessity for this information was additionally explicated at the hearing.[31]

[31] As the General Counsel notes, in the context of information requests concerning possible single employer or alter ego relationships, Chairman Battista and Member Shaumber have recently expressed unease with the rationale of *Corson & Gruman*, supra, indicating that they preferred a view articulated by the Third Circuit that unions must apprise an employer of facts tending to support the reasons for the request for the non-presumptively appropriate information. *See Hertz Corp. v. NLRB*, 105 F.3d 868, 874 (3rd Cir. 1987). Nevertheless, the Board has also held that where the facts supporting the reason for the information request were presented at trial, and the employer still refused to accede to the request, a violation would be found. See *Contract Flooring Systems*, 344 NLRB NO. 117 (2005); *Pulaski Construction Co*., 345 NLRB No. 66 (2005). The instant case does not involve the Union's suspicion of an alleged single employer or alter ego relationship in the context of an ongoing contractual dispute, but rather a request for information in anticipation of bargaining for an initial contract, regarding the identity of the party to be bound, which is a situation not addressed by the cases cited above. In any event, even if the Third Circuit's analytical framework was applied in the instant case, I conclude, as discussed above, that Hirozawa's explanation at trial for the reason the information was sought is sufficient to meet the Union's burden in this regard.

In *Fremont Ford*, 289 NLRB 1290, 1293, 1297 (1988), the Board considered circumstances where, as here, certain information was requested from an employer found to be a "perfectly clear" successor under *Burns* and its progeny. In addition to requesting data concerning the identity and status of unit employees and a description of the wages, hours and other terms and conditions of employment of unit employees, the unions additionally sought information pertaining to the identity and status of the owners and officers of the company and certain key documents relating to the transfer of ownership and takeover by the respondent. The Board found that the employer was obliged to provide all the information sought: "The information requested by the Unions as it relates to unit employees is presumptively relevant to collective bargaining . . . The Respondent has not rebutted this presumption. Nor did the Respondent raise issues of relevance or lack of necessity in denying the Union's information request. For these reasons, we find that the Unions are entitled to the information requested." (internal citations omitted).

In the instant case, Hotel counsel Rothfeld wrote to the Union on August 12 that Respondent was gathering the requested information. No objection to the scope of the information request was raised at that time, or at any time thereafter. Thus, like the respondent in *Fremont Ford*, supra, the Respondent herein has raised no factual issue or cognizable argument regarding relevancy or the lack of necessity in failing to respond to the Union's information request.

After Rothfeld's initial communication, there was no response to the information request until March 2006, when Respondent first provided information relating to the names and addresses of employees, a wholly unexplained delay of some seven months, which, in my view, is tantamount to an abject refusal to provide the information for that period of time.[32] Moreover, there is no doubt that much of the information requested by the Union has never been provided to it.

Respondent argues, without any case support, that the matter is "moot" because it provided the information pursuant to the General Counsel's trial subpoena. Even assuming that the information provided pursuant to the subpoena is coextensive with what was requested by the Union, which has not been established, this defense is insufficient as a matter of fact and law. As an initial matter, the General Counsel is not the Union. Moreover, and more importantly, it would hardly be conducive to the process of collective bargaining if a union were to, as a regular matter, be obliged to seek recourse from the Board to obtain relevant and necessary information from an employer, which has such information within its direct control. See e.g. *The Kroger Co.*, 226 NLRB 512 (1976). In a similar vein, the Board has held that an employer may not refuse to furnish relevant information to a union on the grounds that the union has an alternative source or method of obtaining that information. *Hospitality Care Center*, 307 NLRB 1131 (1992). Absent special circumstances, a union's right to information is not obviated by the fact that it may have access to the information through an independent course of investigation. *Illinois-American Water Co.*, 296 NLRB 715 (1989). Further, the availability of other sources of information does not relieve an employer of its bargaining obligation of disclosure, particularly where it has not shown that production would be unduly burdensome. *American Beef Packers*, 193 NLRB 1117 (1971).[33]

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[32] I note that the complaint, which was issued before the payroll data was supplied, does not specifically allege a delay in providing information.

[33] At the hearing Montalvo, in apparent discomfort with Counsel for the General Counsel's pointed inquiry about whether specific items of information had ever been provided to the Union, testified that certain items had been given to his attorney, but not transmitted. Of course, even if this were true, it

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Accordingly, I find that by failing to furnish information to the Union which is necessary to the performance of its collective-bargaining responsibilities to unit employees, Respondent has violated Section 8(a)(1) and (5) of the Act, as alleged in the complaint. The fact that Respondent may have subsequently provided certain information to the Union, or produced it in response to the General Counsel's trial subpoena does not obviate the need for a remedial order herein. See e.g. *People Care, Inc*., 327 NLRB 814 at fn. 2, 824 (1999).

The Alleged Unilateral Changes

As the Supreme Court has held:

> Although a successor employer is ordinarily free to set initial terms on which it will hire the employees of a predecessor, there will be instances in which it is perfectly clear that the new employer plans to retain all of the employees in the unit and in which it will be appropriate to have him initially consult with the employees' bargaining representative before he fixes terms.

NLRB v. Burns Intern. Sec. Services Inc., supra at 294-295 (1972).

In *Spruce-Up Corp*., 209 NLRB 194, 195 (1974), enfd. 529 F.2d 516 (4th Cir. 1975), the Board stated that the "perfectly clear" caveat should:

> be restricted to circumstances in which the new employer has either actively or, by tacit inference, misled employees into believing that they would all be retained without change in their wages, hours, or conditions of employment, or at least to circumstances where the new employer …has failed to clearly announce its intent to establish a new set of conditions prior to inviting former employees to accept employment.

Moreover, under *Spruce-Up* and its progeny, any potential announcement in terms and conditions of employment must be clearly set forth prior to or upon takeover. The successor employer is free to set new initial terms and conditions of employment up until the moment when it offers employment to the predecessor employer's employees, but not after. *Arden's,* 211 NLRB 510, 512 (1974). See also *Canteen Co*., 317 NLRB 1052 (1995), enfd. 103 F.3d 1355 (7th Cir. 1977), where a successor employer made "perfectly clear" to the union representative that all employees would be hired, a wage reduction announced to employees the next day, prior to formal offers of employment being extended, was found to be an unlawful unilateral change.

Moreover, even if an employer announces some changes in terms and conditions of employment, it is not thereafter privileged to make other changes that are not specifically announced to employees before the takeover. *Cora Realty Co.,* 340 NLRB 366, 367 (2003)

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would not relieve Respondent of liability herein. I find, moreover, that Montalvo's testimony in this regard was clearly extemporized, and I do not credit it. On rebuttal, Counsel for the General Counsel called Rothfeld to rebut Montalvo's testimony about whether he had ever given such information over, primarily as general impeachment testimony. I allowed certain testimony and documentary evidence as an offer of proof, subject to consideration of Respondent's objection to such evidence on the grounds of attorney-client privilege. Upon consideration of the evidence on whole, I find that there is a sufficient basis to reach a determination regarding Montalvo's credibility regarding those specific issues about which there is controversy without considering or relying upon Rothfeld's testimony or the accompanying documentary evidence.

(post takeover termination of fringe benefits unlawful because successor failed to announce them prior to takeover); *Specialty Envelopes Co*., 321 NLRB 828, 832 (1996) (although *Burns* successor lawfully announced certain changes prior to takeover, an unannounced change in attendance policy one month later was unlawful). This is the case, even where the change occurs shortly after the respondent assumes operations. See e.g. *Bronx Health Plan*, 326 NLRB 810, 813 (1998). Moreover, generalized or speculative statements that a successor employer may make future unspecified changes are not sufficient to put employees on notice. See e.g. *East Belden Corp*., 239 NLRB 776, 793 (1987). Similarly, a discussion of possible changes in terms and conditions of employment will not excuse a subsequent unilateral change. See e.g. *C.M.E., Inc*., 225 NLRB 514 (1976), where a successor employer held a meeting with the union representing the predecessor employer's employees. At that meeting, the union was informed that all the employees would be hired. In addition, possible contract changes were discussed, but no conclusions reached. The successor employer's subsequent unilateral changes were found to be unlawful. The Board held that the bargaining obligation attached at the meeting where the union was informed that all the employees were to be rehired, and the successor employer was not privileged to subsequently implement changes absent bargaining. Thus, as the foregoing demonstrates, to the extent an employer's pre-takeover announcement contains ambiguities regarding the terms and conditions of employment offered to employees upon takeover, such ambiguities will be resolved against the employer. See e.g. *Fremont Ford*, supra at 1297.

Applying these principles to the facts of the instant case, I find that the "perfectly clear" caveat is applicable herein. Thus, as discussed above, the Respondent solicited employment applications from its employees beginning on June 29. Contrary to the assertions of Respondent, I find that there was no clear announcement at this time or by the time it assumed operations on July 1 that Respondent intended to establish new terms and conditions of employment, other than those which were set forth in the application packet distributed to employees.

I do not credit Montalvo's testimony that, in Respondent's initial meeting with its prospective employees, employees were told that insofar as their seniority was concerned, they were "starting from scratch." As an initial matter, I find the testimony of Ibarra and Joaquin, summarized above, warrants great weight. Respondent argues that these employees should not be credited as they are among the most senior employees, with a particular vested interest. To the contrary, I conclude that as current and long-term employees of Respondent, their testimony, which directly contradicts statements of their superiors, is likely to be particularly reliable because, on the whole, they are testifying adversely to their pecuniary interests. *Flexsteel Industries*, 316 NLRB 745 (1995), enfd mem. 83 F.3d 419 (5th Cir. 1996) (and cases cited therein). As noted above, these employees testified that there was no discussion of seniority at this meeting, no questions were asked and that employees were assured that things would remain the same. I found these witnesses were confident in their memory of what transpired and their testimony on these issues was clear and unequivocal. I note that their testimony is corroborated by Cabrera who no longer works for Respondent and, therefore, would have no apparent reason to be untruthful on these matters.

Moreover, I discredit Montalvo's version of events for several additional reasons. As an initial matter, I found Montalvo's testimony that employees were told that they were "starting from scratch" to have a hollow ring.[34] His testimony is also inherently implausible, For example,

[34] As noted above, Montalvo testified to his "understanding" of what this phrase meant, but offered no other specific testimony about what was actually told to employees.

I doubt that either Calero or Rentero, whose native language is Spanish, would have used this sort of English-language idiomatic phrase.[35] Further, I find it more likely that if Respondent had intended to announce such a significant change at this time, there would have been a specific and unambiguous statement to such effect, and Respondent's principals would not have relied upon the use of slang to convey such a message to employees.

Additionally, as noted above, Ibarra testified that when she was interviewed for her position, she asked if her seniority would change. Her unrebutted testimony is that Montalvo replied that it "possibly" would, since he did not know her or her work. Had Respondent, in fact, announced the elimination of accrued seniority in an earlier meeting with employees, there would have been no reason either for Ibarra to have asked this question or for Montalvo to reply that it "possibly" would. I further note that the manual of employer policies distributed to employees along with their applications, which requires employee acknowledgement on each page, makes no mention of a seniority policy. I find it unlikely that an anticipated change in such an important term of employment would have been omitted from this manual.

Moreover, as Counsel for the General Counsel notes, both Montalvo and Coronel testified that the subject of seniority came up on several occasions in the months after the initial meeting with employees. The need for such continued discussions undermines Respondent's claim that the elimination of accrued seniority had been a clearly announced initial term of employment.

I do not credit Garcia's testimony about what was said at the June 29th meeting or in her subsequent discussion with her coworkers. In contrast to the testimony of Joaquin and Ibarra, Garcia is a recently-promoted manager whose pecuniary interests lie in corroborating the account of her employer. Moreover, her testimony regarding subsequent discussions with coworkers about their loss of seniority does not ring true. I do not believe that a loss of almost seven years of accrued seniority would have been, as she stated, "not a big issue for her." Moreover, I note that her testimony in this regard was rebutted by Cabrera, who I consider to be a trustworthy witness with a clear and strong memory of events.

With regard to Coronel, Respondent relies upon her testimony that "[t]hey said that all of us were going to start as new. There were going to be small changes. And that all of us were going to start the same day, the July 1st, and we all were the same." While I do believe that Coronel attempted to testify truthfully, I find that her memory of the meeting on June 29 is quite poor. During her testimony, Coronel appeared to be confused about what occurred on that occasion. Apart from her demeanor, Coronel was unable to identify the individual who purportedly made such remarks. I also note that when pressed as to whether the specific issue of seniority was raised at this time, Coronel stated that it was not. Thus, her testimony on this issue is, at best, ambiguous. I find it far more likely that Coronel was conflating discussions Montalvo subsequently had with housekeeping employees regarding seniority, and any other discussions she may personally have had with him on this issue, with what was discussed during the June 29 meeting, about which she has limited recollection.[36]

Based upon the foregoing, given the totality of the circumstances, I conclude that the

[35] I note that the record establishes that Rentero is admittedly uncomfortable conversing in English.

[36] I further note that Coronel did not corroborate Montalvo's apparent attempt to explain that his subsequent announcement regarding seniority and scheduling stemmed from a complaint she brought to him about the inequities of how days off had been assigned. Rather, Coronel testified to the contrary: that she asked Montalvo why employees could not have regular days off.

presentation to employees on June 29 was an introductory one at which time all employees were invited to apply for continued employment, and where Respondent announced its intention to hire as many of them as possible. I further find that there was no clear announcement, either prior to or simultaneous with Respondent's assumption of operations, that there would be a change in the manner by which seniority would be determined, or how scheduling would be influenced by any such change.

In the absence of an initial announcement of new terms and conditions of employment, a successor employer must maintain the status quo regardless of whether it adopts a predecessor's collective bargaining agreement. Where, as here, there is no such agreement, those terms and conditions are established by past practice. *Likra, Inc*., 321 NLRB 134 (1996), citing *Blitz Maintenance*, 297 NLRB 1005, 1008 (1990) enfd. 919 F.2d 141 (6th Cir. 1990). A successor employer, like any other, violates Section 8(a)(5) by making unilateral changes to terms of employment which are mandatory subjects of bargaining. *NLRB v. Katz*, 369 U.S. 736 (1962). As noted above, even in circumstances where an employer has set certain initial terms, employers still have an ongoing obligation to bargain with a union over any subsequent changes to terms and conditions of employment. *Cora Realty Co.*, supra; *Specialty Envelopes*, supra.

The Unilateral Elimination of Seniority

In *Kirby's Restaurant*, 295 NLRB 897, 901 (1989), the Board found an employer's failure to give credit for seniority accrued with the predecessor employer to be unlawful. In a similar vein, in *Hilton's Environmental, Inc*. 320 NLRB 437, 439 (1995), the Board found that a successor employer's unilateral imposition of a probationary period to be unlawful where there was no announcement until after the employer assumed operations and the new condition was imposed on employees without regard as to whether employees, many of whom had many years of service, had previously completed a probationary period with the predecessor employer. The imposition of this additional probationary period was, among other things, inconsistent with established past practice. In *Stephenson Haus*, 279 NLRB 998, 1003 (1986), the administrative law judge, affirmed by the Board, found that the respondent therein violated Section 8(a)(1) and(5) of the Act when it unilaterally discontinued crediting for seniority any service by an employee to the employing industry rendered prior to the date the respondent assumed operations, thereby creating a situation whereby almost every employee had identical seniority.[37] This is precisely what the Respondent has done here. Accordingly, I find that Respondent's unilateral change in seniority for unit employees violated Section 8(a)(1) and (5) of the Act, as alleged.[38]

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[37] As the administrative law judge noted, "when Respondent went about changing . . . wages and working conditions, it was not unilaterally altering the wages and working conditions of its predecessor. It was altering its own wages and conditions, all of which had been in effect for various periods of time subsequent to the takeover. . . .Respondent found itself in the more conventional situation of a unionized company that wanted to make changes in existing wages and conditions. In order to make such changes, it was first under an obligation to notify the representative of its employees of its desires and to give it an opportunity to bargain collectively regarding requested changes." 279 NLRB at 1003.

[38] The complaint additionally alleges that employees' accrued seniority was used to determine priority for time off and scheduling, including the scheduling of employees' work shifts. Respondent does not dispute this to be the case, but argues that any changes it subsequently implemented stem from its lawful announcement that pre-acquisition seniority was to be eliminated, a contention I have rejected. I find, therefore, that there was a change in the manner in which employees were scheduled and assigned days off, and that this change flows from Respondent's unlawful elimination of accrued seniority. I further find a return to the status quo ante in terms of how employee time off is scheduled is warranted as part of the remedy herein. The record fails to establish any other consequence of the unilateral change in employee

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The Alleged Unilateral Changes in the Housekeeping Department

The complaint alleges that in late September or early October 2005, Respondent violated the Act by increasing the work load and changing the duties of employees in the Housekeeping Department. In support of this contention, Counsel for the General Counsel argues that the Board has historically found that employers violate Section 8(a)(5) by unilaterally changing working duties. It is also the case, however, that the Board has consistently held that not every unilateral change violates Section 8(a)(5); the change must be "material, substantial and . . . significant." *Peerless Food Products*, 236 NLRB 161 (1978); *Millard Processing Services*, 310 NLRB 421, 425 (1993).

I find that the evidence adduced on this issue by the General Counsel is not sufficient to establish that the alleged changes meet this standard. I credit the testimony of General Counsel's witnesses that in about October there was a change in the manner in which work was assigned to them, and I additionally credit their subjective assessments that this change has increased the volume of work that they do. I further find however, that the proof adduced by the General Counsel on this issue was too vague and lacking in specific detail to meet its burden to show that these changes were sufficiently substantial to meet the Board's criteria. As noted above, to the extent there is record evidence on this issue, it shows that employees previously received additional assignments on a daily and not, as General Counsel contends, periodic basis. The role that "housemen" or employees without specific room assignments play in the distribution of work is unclear. Moreover, although employees testified that it takes longer for them to complete their assigned tasks, there is insufficient specific evidence as to how much time is actually involved: the one fact which is known is that the official work hours of employees in the Housekeeping Department have not changed. [39] To adopt the General Counsel's characterization of the alleged unilateral changes herein would require me to make certain assumptions which the record as a whole does not support.

In *Kal-Equip Co*., 237 NLRB 1234 (1978), relied upon by the General Counsel, the Board found that the respondent therein violated the Act by unilaterally changing production standards. This case differs from the instant one in various respects. As an initial evidentiary matter, the nature of the alleged unilateral change was specific and fully adduced in the record. Moreover, there was evidence that employees were disciplined for failing to meet the production quotas established by the alleged unilateral changes.[40] One of the cases relied upon the

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seniority.

[39] Counsel for the General Counsel argues that maid's reports from before and after the alleged change would provide documentary evidence on this issue and notes that although such reports were subpoenaed none prior to December 2005 were produced. At the hearing, counsel for Respondent represented that reports for earlier periods could not be located, and I accept that representation, which I note is unchallenged by the General Counsel. The inability of the Respondent to provide these documents pursuant to subpoena does not relieve the General Counsel of its burden of proof and I find it significant that Counsel for the General Counsel did not attempt to adduce more specific testimony from its witnesses regarding these issues.

[40] Counsel for the General Counsel also cites *King Scoopers, Inc*., 340 NLRB 628 (2003) for the general proposition that a unilateral change in work duties is violative of the Act. In that case the Board found that the respondent violated the Act by failing to bargain with the union before implementing the use of a new scanner technology by employees in the respondent's pharmacies. The Board found the implementation of this policy unlawful on the specific grounds that it constituted a work rule which could be grounds for discipline, and thus was a mandatory subject of bargaining, where it was "undisputed" that employees would be subject to discipline for failing to follow the policy. In reaching its determination, the

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respondent therein, and discussed by the administrative law judge, was *The Little Rock Downtowner, Inc*. 148 NLRB 717, 719 (1964). There, the Board found that the employer did not violate the Act when it unilaterally instructed its housekeeping employees to wash motel room windows everyday even though the employees had not, for some time, maintained that standard. The Board held that, even assuming that the new job instructions constituted a unilateral revival of a previously abandoned rule, it would not find that a violation of the Act had occurred. In particular, the Board found that "[t]his type of work order does not exceed the compass of the job duties the affected employees were hired to perform and falls within the normal area of detailed day-to-day operating decisions relating to the manner in which work is to be performed." The rationale of this case is distinguishable from that found in *Alwin Mfg. Co*., 314 NLRB 564, 568 (1994), also relied upon by the General Counsel, where the Board found that the employer's unilateral imposition of minimum production standards,[41] enforceable by disciplinary action, to violate the Act where the "minimum production standards were not merely a refinement or more vigorous enforcement of existing standards but represented a radical departure from past practice."

In the instant case, the facts, at least insofar as they can be gleaned from the record, lend themselves more readily to the analytical framework discussed in *The Little Rock Downtowner*. I cannot conclude that the evidence establishes that the unilateral changes imposed by Respondent were more than "merely a refinement or more vigorous enforcement" of prior standards or that they were outside "the compass of the job duties the affected employees were hired to perform."[42] Based upon the foregoing, I find that the General Counsel has failed to demonstrate that the unilateral changes made by Respondent are "material, substantial and . . . significant," or that they can be found to constitute a violation of Section 8(a)(5) of the Act. Accordingly, I shall recommend that this allegation of the complaint be dismissed.

The Reduction in Personal Days

The complaint alleges that Respondent unilaterally reduced the number of personal days to which employees are entitled from three to two. Respondent denies that it violated the Act in this fashion, and further argues that no employee was ever affected by such a change. The evidence establishes that under the predecessor employer, employees were entitled to three paid personal days per year. Some time after Respondent assumed operations, Housekeeping Department Manager Mroziewska told employees that they would be granted only two such days.

The number of paid personal days granted to employees, like other paid time off from work to which employees are entitled, is a mandatory subject of bargaining. See e.g. *Pine Brook*

Board made specific note of the fact that the respondent's decision to install the scanner technology, was not challenged by the General Counsel in that case. Id. at 629.

[41] In that case, there was specific evidence that the employer informed four classifications of employees what the minimum production requirements per hour for their functions were, that they would have one day to become acclimated to them and if they did not meet them beginning the following day, they would be subject to disciplinary action.

[42] See also *Flambeau Airmold Corp*., 334 NLRB 165, 172 (2001), where the positions of several employees were eliminated with other employees required to "pick up" their responsibilities. The Board affirmed the administrative law judge's finding that no violation had occurred with regard to those employees who had "pick[ed] up" these job responsibilities because there was "no evidence establishing that this was a material change." In reaching this decision, the administrative law judge cited a lack of specific evidence regarding the difficulty of the newly-assigned tasks or the amount of time they took to perform.

Care Center, Inc., 322 NLRB 740, 748 (1996) (and cases cited therein). Montalvo testified that no employee has ever been denied a third personal day; however, even if this is true, the testimony of the affected employees, that they were specifically advised of the change, is unrebutted.[43] Moreover, there is no evidence that Respondent has officially rescinded its announcement of the change. Respondent additionally relies upon Montalvo's testimony that he learned of the past practice of awarding employees three paid personal days at some point in time after Respondent assumed the operation of the Hotel. As noted above, I have generally discredited Montalvo's testimony in significant regard. His testimony on this issue, adduced largely through the use of leading questions, is suspect as well. I note that Azevedo remained employed at the Hotel for two months to assist Montalvo with the transition, and find it unlikely that the predecessor's time off policies would not have been communicated to him. Moreover, Mroziewska was clearly cognizant of the predecessor's employment practices, as she announced the change to employees. In *Pepsi-Cola Distributing Co., of Knoxville, Tenn.*, 241 NLRB 869, 870 (1979), the Board considered a situation where the successor had no knowledge of the predecessor's practice of paying a year end bonus to salesmen at the time in promulgated initial terms and conditions of employment, but learned of it at a later time. The Board found that the unilateral discontinuation of the bonus was a violation of the Act, noting that the successor should have bargained with the union prior to discontinuing the predecessor's practice.

Based upon the foregoing, I find that by reducing the number of paid personal days granted to employees, Respondent has violated Section 8(a)(1) and (5) of the Act, as alleged.

Conclusions of Law

1. The Respondent, Hotel Vincci, LLC d/b/a The Avalon, is an employer engaged in commerce within the meaning of section 2(6) and (7) of the Act.

2. The Union, Local 758, Hotel & Allied Services Union, SEIU, is a labor organization within the meaning of Section 2(5) of the Act

3. At all material times, including on and after July 1, 2005, the Union has been the designated exclusive collective-bargaining representative of Respondent's employees in the following appropriate unit within the meaning of Section 9(a) of the Act:

> All full-time and regular part-time service and maintenance employees including front desk employees, guest service managers, night auditors, bell staff, maintenance workers, housekeeping workers, housemen, laundry workers, minibar attendants and room attendants employed by the Employer at its facility located at 16 East 32nd Street, New York, New York, excluding all other employees, including office clerical employees, managerial employees and guards, professional employees and supervisors as defined by the Act.

4. By failing and refusing to meet and bargain with the Union from July 1, 2005 through mid-December 2005, and by failing and refusing to promptly schedule bargaining meetings, Respondent violated Section 8(a)(1) and (5) of the Act.

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[43] See *Kurdziel Iron of Wauseon, Inc*., 327 NLRB 155, 155-156 (1998), cited by Counsel for the General Counsel, where the Board found that an announced curtailment of breaks, without actual curtailment, violated Section 8(a)(1) and (5), because an announced change sends a message to employees that an employer claims the sole right to set a term and condition of employment.

5. By failing and refusing to furnish the Union with the information requested by it in its letters of July 19 and July 29, 2005, the Respondent violated Section 8(a)(1) and (5) of the Act.

6. By decreasing employees' personal days from three to two per year, without notice to or consultation with the Union, Respondent violated Section 8(a)(1) and (5) of the Act.

7. By eliminating the accrued seniority of employees which had been used for determining priority for time off and scheduling, without notice to or consultation with the Union, Respondent violated Section 8(a)(1) and (5) of the Act.

8. The aforesaid unfair labor practices affect commerce within the meaning of Section 8(a)(1) and (5) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

I shall recommend that Respondent be ordered to meet and bargain in good faith with the Union as the exclusive collective bargaining representative of its employees in the unit, and to embody any understanding reached in a signed agreement. I shall further recommend that Respondent be ordered to furnish the Union with all the information requested by the Union in its letters of July 19 and 29, 2005.[44] I shall additionally recommend that Respondent be ordered to cease and desist from making unilateral changes terms and conditions of employees and rescind those changes implemented following its July 1, 2005 assumption of operations, in particular the reduction in the number of personal days to which employees are entitled and the elimination of employees' accrued seniority, until such time as Respondent negotiates in good faith with the Union to agreement, or to impasse. I shall further recommend that Respondent be ordered to reinstate the method that was in place prior to July 1, 2005 for determining priority for time off and scheduling for employees, and that Respondent be ordered to make employees whole for any loss of pay or other benefits they may have suffered as a result of the Respondent's unilateral changes in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970) enfd. 444 F 2d. 502 (6th Cir. 1971) with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[45]

ORDER

The Respondent, Hotel Vincci, LLC, d/b/a The Avalon, its officers, agents, successors, and assigns, shall

[44] I note that certain information was provided to the Union in March 2006. However, given the passage of time and employee turnover, that information may no longer be accurate and complete.

[45] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

1. Cease and desist from

(a) Failing and refusing to meet and bargain in good faith with Local 758, Hotel & Allied Services Union, SEIU, in the following appropriate unit:

All full-time and regular part-time service and maintenance employees including front desk employees, guest service managers, night auditors, bell staff, maintenance workers, housekeeping workers, housemen, laundry workers, minibar attendants and room attendants employed by the Employer at its facility located at 16 East 32nd Street, New York, New York, excluding all other employees, including office clerical employees, managerial employees and guards, professional employees and supervisors as defined by the Act.

(b) Failing and refusing to provide the Union with information necessary and relevant to the performance of its responsibilities as the exclusive collective-bargaining representative of the employees in the above-described unit and, in particular, such information as was requested in the Union's letters of July 19 and 29, 2005.

(c) Reducing the number of personal days to which employees are entitled, eliminating employees' accrued seniority or making any other changes to the terms and conditions of employment of employees in the unit, without prior notice to and consultation with the Union.

(d) In any like or related manner interfering with, restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Upon request, bargain collectively and in good faith concerning wages, hours and other terms and conditions of employment with the Union as the exclusive representative of employees in the above-described unit, including promptly scheduling bargaining meetings, and embody any understanding reached in a signed agreement.

(b) Provide the Union, in a timely fashion, with the information requested by it in its letters of July 19 and 29, 2005.

(c) Upon request, rescind the unilateral changes in terms and conditions of unit employees by restoring the number of personal days to which employees are entitled, restoring employees' accrued seniority and reinstating the method that was in place prior to July 1, 2005 for determining priority for time off and scheduling for employees until such time as Respondent negotiates in good faith with the Union to agreement, or to impasse.

(d) Make employees whole for any loss of pay or other benefits, with interest, they may have suffered as a result of the Respondent's unilateral changes relating to their personal days or accrued seniority.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in New York, New York copies of the attached notice marked "Appendix"[46] in both English and Spanish. Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees] are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 1, 2005.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C., July 6, 2006.

_____
Mindy E. Landow
Administrative Law Judge

[46] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT fail and refuse to bargain collectively in good faith with Local 758, Hotel & Allied Services Union, SEIU (the Union) concerning wages, hours and other terms and conditions of employment of employees in the following unit:

All full-time and regular part-time service and maintenance employees including front desk employees, guest service managers, night auditors, bell staff, maintenance workers, housekeeping workers, housemen, laundry workers, minibar attendants and room attendants employed by the Employer at its facility located at 16 East 32nd Street, New York, New York, excluding all other employees, including office clerical employees, managerial employees and guards, professional employees and supervisors as defined by the Act.

WE WILL NOT fail and refuse to furnish to the Union information requested in its letters of July 19 and 29, 2005.

WE WILL NOT make unilateral changes to the terms and conditions of employment of our employees represented by the Union including reducing the number of personal days to which they are entitled or eliminating their accrued seniority and the priority such accrued seniority is given in scheduling time off for employees.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit described above.

WE WILL furnish to the Union in a timely fashion the information requested by it in its letters of July 19 and 29, 2005.

WE WILL, on request, rescind the unilateral changes to the terms and conditions of employment of our employees in the unit set forth above by restoring the number of personal days to which they are entitled, restoring their accrued seniority and reinstating the method that was in place prior to July 1, 2005 for determining priority for time off and scheduling for our employees, until such time we negotiate in good faith with the Union to agreement, or to impasse.

VINCCI USA, LLC d/b/a THE AVALON

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

26 Federal Plaza, Federal Building, Room 3614

New York, New York 10278-0104

Hours: 8:45 a.m. to 5:15 p.m.

212-264-0300.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 212-264-0346.